IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1289 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANCHHABEN RATILAL - Appellant(s)
Versus
KOLI BHAGUBHAI DHANABHAI & 3 – Defendant(s)

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Appearance :

MR AJ PATEL for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS HANSA PUNANI, AGP for Defendant(s) : 2,
MR RAJNI H MEHTA for Defendant(s) : 3,
MR BP TANNA for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 01/11/2006

ORAL JUDGMENT

Appellant is the original claimant before the Motor Accident

Claims Tribunal at Rajkot. She filed M.A.C. Petition No. 370 of 1983 for obtaining compensation of Rs.50,000/= for the injuries received by her in a vehicular accident on 8/6/1983 around 11.00 p.m. The Tribunal has awarded sum of Rs.25,500/= by way of compensation together with proportionate costs and interest at the rate of 9% p.a. According to the appellant, the compensation awarded by the Tribunal is inadequate and is required to be enhanced and hence she has filed this appeal for claiming additional compensation of Rs.20,000/=.

2. The record shows that due to the scarcity of water in city of Rajkot, a tanker belonging to respondent no. 4 was moving around to supply water to the citizens. Around 11.00 p m it went to area known as Sahkar Society and there while the driver of the tanker i.e. Respondent no. 1 was taking the vehicle in reverse, he knocked down the appellant causing her serious injuries. She was taken to Government hospital at Rajkot for treatment. Subsequently she preferred the claim petition claiming Rs.50,000/= by way of compensation. According to her, she was earning about Rs.450/- to Rs.600/- by doing tailoring work. However, due to injuries she was unable to do it. She, therefore, claimed Rs.15,000/- for permanent disability, Rs.15,000/- for loss of earning capacity, Rs.15,000/- for pain, shock and suffering and Rs.5,000/- for medicine, special diet, etc.

3. At the trial, both the sides produced respective evidence in

support of their cases. On the basis of the said material, the Tribunal came to the conclusion that the appellant sustained injuries on account of the negligence of driver i.e., respondent no. 1. The Tribunal also assessed the quantum of compensation keeping in view the injuries sustained by the appellant. According to the Tribunal, the just and proper compensation was Rs.25,500/-. The Tribunal also came to the conclusion that so far the Insurance Company is concerned, there was no liability since the factum regarding insurance was not proved. The Tribunal, therefore, held the Rajkot Municipal Corporation, namely the owner of the vehicle, responsible to pay the compensation. The Corporation has not preferred any appeal. It is this award which is now under challenge in this appeal.

4. I have heard Mr. Shital Patel, learned advocate for the appellant, Mr. BP Tanna, learned advocate for respondent no. 4 and Mr. Parikh, learned advocate for respondent no. 3. It is submitted by Mr. Shital Patel that considering the injuries suffered by the appellant, the amount of compensation awarded by the Tribunal is inadequate. Mr. Tanna, on the other hand, supported the judgment. According to him, even the amount awarded by the Tribunal is slightly on the higher side and, therefore, there is no question of any enhancement in the quantum of compensation.

5. Having carefully gone through the record of this appeal and also

having carefully considered the submission advanced by Mr. Patel, Mr. Tanna and Mr. Parikh, it clearly appears that the appellant sustained serious injuries due to vehicular accident which took place on 8/6/1983. So far as the issue with regard to negligence of the driver of the offending vehicle is concerned, the Tribunal has adequately discussed it in its judgment and I do not find any error having been committed by it in coming to the conclusion that the accident occurred only due to negligence of the driver of the offending vehicle. No appeal has been preferred against this finding and hence this has become final.

5.1. So far as the quantum is concerned, additional compensation of Rs.20,000/- is made before this Court. According to Mr. Patel, the compensation awarded to the appellant, particularly under the head of pain, shock and suffering and the loss of earning capacity is inadequate and it is required to be enhanced. The Tribunal has discussed this issue in its judgment in detail. The injuries that had been suffered by the appellant are as under :-

> "1. Tenderness and edema over right leg
> 2. Tenderness over foot more on mid-tarsal region right side
> 3. Mid-tarsal movement limited by 50%
> 4. Swelling over right ankle
> 5. Ankle dorsiflexion 10 o planter flexion 20 o possible."

The medical evidence shows that the permanent partial disability was assessed

at 20%. The Tribunal has awarded Rs.7,500/- for pain, shock and suffering, but considering the nature of injuries stated above and also the fact that shows that the appellant has received permanent partial disability to the extent of 20%, the amount determined by the Tribunal appears to be inadequate. Medical certificates are on record at Exhs. 58 and 59. It transpires that there was fracture of base of 5th metatarsal on right side and she was hospitalized from 10th June, 1983 to 15th June, 1983 and even thereafter the follow up treatment. In that view of the matter, the amount determined by the Tribunal appears to be on a lower side and it is now enhanced to Rs.15,000/-. It also appears that there was hospitalization for a period of 5 days and even thereafter the follow up treatment. The appellant has claimed Rs.4,000/- for the medical treatment and incidental expenses. Considering the aforesaid injuries and the hospitalization and the follow up treatment, it is quite natural that she might have spent around Rs.4,000/-, but the Tribunal has awarded only Rs.1,000/-. Under that head also the compensation is required to be enhanced. It is now assessed at Rs.4,000/-. So far the other findings of the Tribunal are concerned, I do not wish to disturb them.

The result is that the appeal is partly allowed. The respondents no. 1 and 4 shall pay to the appellant additional sum of Rs.10,500/- [Rupees Ten Thousand Five Hundred only] together with proportionate costs and

interest at the rate of 9% p a from the date of the petition till deposit, within three months from the date of receipt of certified copy of the judgment.

[Akshay H Mehta, J.]

* Pansala.